

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:22-cr-00012-MMD-CSD-1

Plaintiff,

ORDER

v.

SHANA LEE RUBIN,

Defendant.

I. SUMMARY

Defendant Shana Lee Rubin was indicted on a single count of possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii). (ECF No. 1.) Before the Court is Rubin's motion to suppress (ECF No. 26 ("Motion")) all evidence resulting from the placement and use of a GPS tracking device on a vehicle driven by Rubin.¹ As further explained below, because the Court finds that the government exceeded the scope of its search warrant, the Court will grant the Motion.

II. FACTUAL BACKGROUND

The Court relies on documents filed by the parties in support of the Motion and related briefs to construct this factual background.

A. Search Warrant Application and Affidavit

On January 6, 2022, Detective Uriel Collazo applied for a search warrant from the First Judicial District Court of the State of Nevada in Carson City. (ECF Nos. 26-1, 26-2.) The application requested a search warrant authorizing the placement of a GPS tracking

¹The government filed a response (ECF No. 32), and Rubin filed a reply (ECF No. 33). Rubin requested an evidentiary hearing on the Motion (ECF No. 26 at 1), but the Court determined that an evidentiary hearing was not necessary to resolve the Motion. However, the Court heard oral argument on the Motion ("the Hearing"). (ECF No. 40.)

1 device on “the vehicle described as a White General Motors Company pickup, bearing
2 Nevada license plate 985M46 belonging to Alan James Morgan.” (ECF No. 26-1 at 10.) In
3 the application, Detective Collazo states that he is the lead investigator for a series of
4 possible crimes related to controlled substances “committed by Alan James Morgan” and
5 that “[t]here is probable cause to believe that evidence of the above-listed offenses will be
6 found by placing a GPS tracking device on” Morgan’s white pickup. (*Id.* at 2-3.)

7 In support of the application, Detective Collazo submitted an affidavit describing an
8 investigation starting in March 2021 by the Tri-NET Narcotic Task Force and Drug
9 Enforcement Administration (“DEA”) Special Agents of “a Methamphetamine, Heroin, and
10 counterfeit M30 Fentanyl pill drug supplier out of Woodland, California.” (*Id.* at 3.) The
11 affidavit also describes this drug supplier’s use of “runners” to deliver the illegal narcotics.
12 (*Id.*) In September 2021, law enforcement arrested one of these “runners” who then
13 provided information that she regularly transported drugs to Morgan, that Morgan would
14 sometimes go to California to pick up large quantities of drugs himself, and that Morgan
15 drives a white GMC pickup bearing Nevada license plate number 985M46. (*Id.* at 4-5.) In
16 December 2021, a confidential informant also provided information to Detective Collazo
17 that Morgan has traveled to Carson City several times to distribute narcotics. (*Id.* at 5-6.)
18 Law enforcement obtained further information on Morgan consistent with involvement in
19 drug trafficking from a criminal history check on Morgan, through surveillance of Morgan’s
20 residence, and from a DEA Special Agent regarding communication between Morgan and
21 the California drug supplier. (*Id.* at 6-7.)

22 **B. Search Warrant and Amendment**

23 The presiding judge issued the requested search warrant on January 6, 2022. (ECF
24 No. 26-2.) The search warrant states that “there is probable cause to believe that [crimes
25 related to controlled substances] were committed by Alan James Morgan,” that “evidence
26 of said crime may be found through monitoring the current location and location history of
27 a White General Motors Company pickup, bearing Nevada license plate 985M46,” and
28 that “installation of a GPS tracking device on said vehicle is likely to allow investigators to

1 positively locate Alan James Morgan and provide information and insight into possible
2 drug transactions and the crimes listed herein.” (*Id.* at 2.) The warrant authorized the
3 application of a GPS tracking device to the white pickup and monitoring of the device for
4 30 days from the time of placement. (*Id.* at 3.)

5 On January 6, 2022, law enforcement placed a GPS tracking device on the white
6 pickup and began monitoring it. (ECF No. 26-4; ECF No. 32 at 4.) It was active until
7 January 21, 2022. (*Id.*) The white pickup was parked at 56 South Park Street, Powning
8 Addition, Reno when the GPS tracking device was first activated. (ECF No. 26-4.)

9 On January 7, 2022, Detective Collazo sought an amendment to the January 6,
10 2022 search warrant. (ECF No. 26-3 at 2.) The transcript of the telephonic hearing
11 indicates the following as pertinent to the warrant. Detective Collazo stated that while law
12 enforcement was doing surveillance on Morgan’s residence at 1120 Locust Street, Reno,
13 they discovered that Morgan came out of his house, got into a newer GMC pickup with a
14 temporary tag, and was driving it around town. (*Id.*) Law enforcement “positively identified
15 him,” they “checked that vehicle through Carson City Dispatch,” and “it came back to Alan
16 James Morgan.” (*Id.*) Detective Collazo clarified with the judge that this vehicle was a blue
17 2009 GMC pickup and that nothing “by way of [their] probable cause [had] changed.” (*Id.*
18 at 4.) The judge then “authorize[d] Detective Collazo to sign [his] name to an amendment
19 to the warrant to add a GPS tracking device to the GMC pickup that’s described.” (*Id.*)

20 **C. Morgan’s Arrest and Continued GPS Tracking**

21 On January 12, 2022, law enforcement conducted surveillance on Morgan’s
22 residence and arrested Morgan for possession of methamphetamine, counterfeit M30
23 fentanyl tablets, and cocaine. (ECF No. 26-5 at 5.) Through investigation, law enforcement
24 “learned that since Morgan’s incarceration (January 12 2022), Rubin was driving Morgan’s
25 white GMC pickup bearing 985M46.” (*Id.*)

26 On January 20, 2022, Detective Collazo learned that Rubin—known as “Morgan’s
27 girlfriend”—recently traveled to California to purchase methamphetamine and heroin from
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1 the California drug supplier and that Rubin “was going to sell these narcotics and use the
2 money to post Morgan’s bail.” (*Id.*)

3 On January 21, 2022, through the use and monitoring of the GPS tracking device,
4 law enforcement learned the white pickup was in the Walmart parking lot located at 3200
5 Market Street in Carson City and subsequently “responded to Wal[m]art and established
6 surveillance on the pickup.” (*Id.*; ECF No. 32 at 5.) Sergeant Gregory Prestipino observed
7 Rubin and a young boy, later identified as her son, leave Walmart and approach the white
8 pickup. (ECF No. 26-5 at 5.) Sgt. Prestipino then observed Rubin engage in what
9 appeared to law enforcement as a possible drug transaction with an individual later
10 identified as Terry Ann Bausback. (*Id.* at 6.)

11 Law enforcement then followed both Rubin and Bausback’s vehicles as they exited
12 the Walmart parking lot. (*Id.*) Law enforcement conducted traffic stops on both Rubin and
13 Bausback’s vehicles after they both failed to stop behind the limit line at a stop sign. (*Id.*)
14 Detective Collazo interviewed Rubin, and she “admitted to selling Bausback \$260.00
15 worth of [m]ethamphetamine” in the Walmart parking lot. (*Id.*) Law enforcement found the
16 methamphetamine in Bausback’s vehicle. (*Id.* at 7.) Rubin “admitted she recently traveled
17 to Woodland, California to meet with a drug supplier” and “to find out if the drug supplier
18 would bail out Morgan.” (*Id.*) Rubin traveled back to Reno with methamphetamine and
19 heroin from the drug supplier. (*Id.*) Rubin informed law enforcement that she had stored
20 three pounds of the methamphetamine in her dark blue BMW sedan. (*Id.*) Rubin “gave
21 written and verbal consent to search her BMW sedan for the narcotics” and handed three
22 packages of the narcotics from the car to Sgt. Prestipino. (*Id.* at 7-8.) Rubin also permitted
23 law enforcement to seize narcotics from her motel room. (*Id.* at 8.) Law enforcement found
24 methamphetamine, heroin, and diazepam in Rubin’s motel room. (*Id.*) Rubin informed
25 Detective Collazo that the heroin came from the drug supplier in California. (*Id.* at 9.)

26 On February 17, 2022, the government indicted Rubin on a single count of
27 possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§
28 841(a)(1) and 841(b)(1)(A)(viii). (ECF No. 1.)

III. DISCUSSION

The Court first addresses whether Rubin has standing to challenge the GPS tracking of the white pickup, then whether the continued GPS tracking exceeded the scope of the search warrant.

A. Standing

The government argues that Rubin has not met her burden of demonstrating she has standing to challenge the location data obtained by GPS tracking of the white pickup. (ECF No. 32 at 8.) “To invoke the Fourth Amendment protections, a person must show that [they] had a legitimate expectation of privacy.” *U.S. v. Shryock*, 342 F.3d 948, 978 (9th Cir. 2003) (citing *Smith v. Maryland*, 442 U.S. 735, 740 (1979)). An expectation of privacy is legitimate if it is one that society accepts as objectively reasonable. See *Minnesota v. Olson*, 495 U.S. 91, 95-96 (1990); *California v. Greenwood*, 486 U.S. 35, 39-40 (1988).

“The Fourth Amendment shields not only actual owners, but also anyone with sufficient possessory rights over the property searched.” *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1186 (9th Cir. 2015). “[A] defendant who lacks an ownership interest may still have standing to challenge a search, upon a showing of ‘joint control’ or ‘common authority’ over the property searched.” *United States v. Thomas*, 447 F.3d 1191, 1198 (9th Cir. 2006) (citation omitted). “Common authority rests ‘on mutual use of the property by persons generally having joint access or control for most purposes.’” *Id.* For example, “a defendant may have a legitimate expectation of privacy in another’s car if the defendant is in possession of the car, has the permission of the owner, holds a key to the car, and has the right and ability to exclude others, except the owner, from the car.” *Id.* at 1198 (9th Cir. 2006).

The government argues that Rubin points to no evidence that Morgan—the owner of the vehicle—had granted her permission to drive the white pickup either generally or on January 21, 2022. (ECF No. 32 at 9.) In her reply, Rubin argues that it is an incorrect statement of law that she “must show she had permission to drive the truck” and points to

1 the general “common authority” standard in *Thomas*. (ECF No. 33 at 2.) However, the
2 relevant case law largely supports a reading of the “joint control” or “common authority”
3 standard regarding vehicles as requiring the permission of the owner or an authorized
4 driver of the vehicle. See *Thomas*, 447 F.3d at 1198-99; *United States v. Portillo*, 633 F.2d
5 1313, 1317 (9th Cir. 1980). Even so, the Court disagrees with the government and finds
6 that there is sufficient circumstantial evidence to demonstrate that Rubin was permitted by
7 Morgan to drive the white pickup.

8 The government concedes that Rubin “drove the white pickup at times, and
9 certainly after Morgan’s arrest on January 12, 2022.” (ECF No. 32 at 10.) The vehicle was
10 parked at an address purportedly associated with Rubin on January 6, 2022—the day the
11 GPS tracking began—and at several times throughout the surveillance period, which the
12 government does not dispute. (ECF No. 26 at 3-4; ECF No. 26-4.) There is no indication
13 that the vehicle was reported stolen on or after January 6, 2022. The transcript of the
14 search warrant amendment hearing indicates that on January 7, 2022, Morgan was
15 observed driving in a newer blue GMC pickup that he also owned. (ECF No. 26-3 at 3-4.)
16 The case report written by Detective Collazo indicates that through investigation,
17 detectives “learned that since Morgan’s incarceration (January 12, 2022), [Rubin] was
18 driving Morgan’s white GMC pickup.” (ECF No. 26-5 at 5.) Law enforcement also
19 confirmed that the white pickup was registered to Morgan, who was known to be Rubin’s
20 boyfriend. (ECF No. 26-1 at 5; ECF No. 26-5 at 5.) The Court finds that, taken together,
21 these facts establish that Rubin was permitted to drive the white pickup during the GPS
22 tracking period from January 6, 2022 to January 21, 2022. See *United States v. Sconiers*,
23 Case No. 1:21-cr-00267 JLT, 2023 WL 425818, *4 (E.D. Cal. Jan. 26, 2023) (similar
24 analysis).

25 Rubin was undoubtedly in possession of the car and held a key to the car during
26 the times she drove the white pickup. Detective Collazo indicated in the case report and
27 the government concedes that she was the driver of the car at least since January 12,
28 2022, and therefore she was in control of the car and had the keys. (ECF No. 26-5 at 5;

ECF No. 32 at 10.) As the driver with keys to the car and permission to drive it, Rubin had the right and ability to exclude others, except Morgan. For instance, on January 21, 2022, Rubin was observed driving the car with her son. (ECF No. 26-5 at 5-6.) As she was the driver of the car who possessed the keys and controlled the movement of the car, Rubin made the decision to permit her son to enter the car. *See United States v. Poblete*, Case No. 2:11-cr-00189-RLH, 2012 WL 5879742, *11 (D. Nev. Oct. 31, 2012), *report and recommendation adopted*, Case No. 2:11-cr-189-RLH-VCF, 2012 WL 5879798 (D. Nev. Nov. 20, 2012) (similar analysis). Accordingly, Rubin has satisfied the four “common authority” factors identified in *Thomas*, demonstrated a legitimate expectation of privacy in the white pickup, and therefore established standing to challenge the GPS tracking of the white pickup.²

B. Whether Search Exceeded Scope of Warrant

Rubin does not challenge the validity of the search warrant but rather challenges the continued placement and monitoring of the GPS tracking device as unreasonable after law enforcement became aware that Morgan was no longer driving the white pickup. (ECF No. 26 at 5-6, 10-11.) The issue here is essentially whether the continued GPS tracking was conducted within the scope of the warrant. “If the scope of [a] search exceeds that permitted by the terms of a validly issued warrant . . . , the [search and any] subsequent seizure [are] unconstitutional without more.” *Horton v. California*, 496 U.S. 128, 140 (1990). “Whether a search exceeds the scope of a search warrant is an issue [courts] determine through an objective assessment of the circumstances surrounding the issuance of the warrant, the contents of the search warrant, and the circumstances of the search.” *United States v. Hitchcock*, 286 F.3d 1064, 1071 (9th Cir.), *opinion amended and*

²Because there was no evidence obtained from a search of the interior of the white pickup itself but rather the relevant evidence obtained was Rubin’s location data on January 21, 2022 from extended GPS tracking of the vehicle, Rubin potentially also has standing under *Carpenter v. United States*. See 138 S. Ct. 2206, 2215 (2018) (“[L]onger term GPS monitoring in investigations of most offenses impinges on expectations of privacy—regardless whether those movements were disclosed to the public at large.”) (citing concurrences in *United States v. Jones*, 566 U.S. 400, 415, 430 (2012)).

1 *superseded on other grounds*, 298 F.3d 1021 (9th Cir. 2002); *see, e.g., United States v.*
2 *Hurd*, 499 F.3d 963, 966-69 (9th Cir. 2007) (application of the *Hitchcock* test)).

3 **1. Circumstances surrounding the issuance of the warrant**

4 On January 6, 2022, Officer Collazo applied for a warrant authorizing the placement
5 of a GPS tracking device on the white pickup belonging to Morgan. (ECF No. 26-1 at 10.)
6 In support of the warrant application, Officer Collazo submitted an affidavit setting forth
7 probable cause for the requested GPS tracking. (*Id.* at 3-7.) The affidavit largely describes
8 Morgan involved in alleged drug trafficking schemes sometimes with the use of his white
9 pickup truck. (*Id.*) The government emphasizes that Officer Collazo explained in the
10 affidavit that observing the white pickup will “provide insight into [Morgan]’s direction of
11 travel, as well as information regarding the whereabouts of individuals who may be
12 assisting [Morgan] in eluding from law enforcement, specifically individuals who are
13 associated with the vehicle.” (ECF No. 32 at 4; ECF No. 26-1 at 7.) The application
14 specifically seeks a warrant authorizing the placement of a GPS tracking device on
15 Morgan’s white pickup for the purpose of obtaining detailed tracking and location history
16 on the vehicle for 30 days from the date of placement “to monitor and locate [Morgan], and
17 other persons engaged in assisting [Morgan] in committing crimes described in this
18 Affidavit.” (ECF No. 26-1 at 10.)

19 While the application and affidavit for the warrant describes the nature of drug
20 trafficking schemes as involving multiple people and appears to seek to also monitor other
21 individuals associated with the white pickup or assisting Morgan in committing crimes, the
22 application and affidavit clearly indicate that the probable cause the warrant rests on is
23 probable cause that evidence of crimes “committed by Alan James Morgan” will be found
24 by placing a GPS tracking device on Morgan’s white pickup. (ECF No. 26-1 at 3, 7.) And
25 the information provided in the application and affidavit supporting such probable cause
26 largely pertains only to Morgan. That is, the application and affidavit include information
27 from: (1) one of the arrested “runners” and a confidential informant specifically about
28 Morgan’s involvement in drug trafficking; (2) a criminal history check on Morgan; (3) law

1 enforcement surveillance conducted on Morgan's residence; and (4) a DEA Special Agent
2 regarding communication between Morgan and the California drug supplier. (*Id.* at 5-7.)
3 The Court therefore finds that probable cause here was specifically tied to Morgan and
4 not necessarily his white pickup or any "associates."

5 The government argues that warrants need not be tied to specific individuals (ECF
6 No. 32 at 11), but if the government intended the warrant to be tied specifically to the white
7 pickup, the government needed more to establish that there was probable cause that the
8 truck was being used by individuals other than Morgan in furtherance of a crime. The
9 affidavit only references the white pickup as being driven by Morgan and was therefore
10 insufficient to support such probable cause. (ECF No. 26-1 at 5, 6.) As Rubin notes and
11 the Court agrees, the affidavit also "did not establish any specifics about [Morgan]'s
12 alleged 'associates' except for the confidential informant who was already known to law
13 enforcement and two other individuals" who were already apprehended by police and not
14 associated with the white pickup.³ (ECF No. 33 at 4; ECF No. 26-1 at 4-6.)

15 Moreover, the warrant is only sufficiently tied to Morgan because the warrant itself
16 only names Morgan and indicates "there is probable cause to believe that [crimes] were
17 committed by Alan James Morgan" and that "installation of a GPS tracking device on [the
18 white pickup] is likely to allow investigators to positively locate Alan James Morgan and
19 provide information and insight into possible drug transactions and the crimes listed
20 herein." (ECF No. 26-2 at 2.) In addition, the presiding judge permitted amendment of the
21 warrant the following day to add a GPS tracking device to a different blue GMC pickup
22 based on the fact that Morgan was observed driving that new truck, and officers indicated
23 during that amendment hearing that nothing regarding their probable cause had changed.
24 (ECF No. 26-3 at 3-4.) This further indicates that the probable cause supporting the
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28 ³The names of the two associates apprehended by police were redacted in the
exhibit the Court received and reviewed. (ECF No. 26-1.) At the Hearing, the government
confirmed that none of the redacted names were Rubin's.

1 January 6, 2022 warrant and the January 7, 2022 amendment was directly tied to Morgan,
2 not his white pickup truck.

3 Accordingly, an objective assessment of the circumstances surrounding the
4 issuance of the warrant does not support the conclusion that the issuing judge authorized
5 the GPS tracking of the white pickup while driven exclusively by someone other than
6 Morgan—such as Rubin.

7 **2. Contents of the search warrant**

8 The Fourth Amendment requires that search warrants be specific. “Specificity has
9 two aspects: particularity and breadth. Particularity is the requirement that a warrant must
10 clearly state what is sought. Breadth deals with the requirement that the scope of the
11 warrant be limited by the probable cause on which the warrant is based.” *United States v.*
12 *Towne*, 997 F.2d 537, 544 (9th Cir. 1993) (internal quotation marks and citations omitted).
13 The particularity requirement of the Fourth Amendment “ensures that the search will be
14 carefully tailored to its justifications, and will not take on the character of the wide-ranging
15 exploratory searches the [f]ramers intended to prohibit.” *Maryland v. Garrison*, 480 U.S.
16 79, 84 (1987).

17 Here, as noted, the January 6, 2022 warrant authorized the placement of a GPS
18 tracking device to Morgan’s white pickup for the purposes of acquiring tracking and
19 location history on the vehicle for 30 days from the time of placement. (ECF No. 26-2 at
20 3.) Again, the warrant itself only names Morgan and no other individuals on which probable
21 cause is based. (*Id.* at 2-3.) The government argues that the affidavit “was specifically
22 incorporated by reference into the warrant itself.” (ECF No. 32 at 4.) While that is indeed
23 true (ECF No. 26-2 at 2), the affidavit cannot expand the scope of the warrant. *See United*
24 *States v. Sedaghaty*, 728 F.3d 885, 913 (9th Cir. 2013) (“We have never held that an
25 affidavit could expand the scope of a legitimate warrant beyond its express limitations nor
26 do we do so here.”). Because “[t]he scope of [a] warrant [is] limited by the probable cause
27 on which the warrant is based,” the warrant here is limited by the probable cause linked
28 to Morgan. *See Towne*, 997 F.2d at 544.

1 At the Hearing, the government concedes that there would be some cutoff point for
2 the warrant—besides the authorized 30-day cutoff—at which point continued GPS
3 tracking would not be reasonable. The government argues that that cutoff point had not
4 been reached here because the warrant allowed law enforcement to continue to track the
5 white pickup after Morgan’s arrest to obtain evidence of the same drug trafficking
6 conspiracy. But as already discussed, the government bases that on allegations in the
7 affidavit that are insufficiently specific and cannot be used to expand the scope of the
8 warrant on its face. If the probable cause on which the warrant is based is tied to someone
9 who is later taken into custody, as here, then it is clear that the cutoff point at the latest
10 would be when that target was taken into custody.

11 Accordingly, once it became clear that Morgan was no longer driving the white pick-
12 up and certainly after Morgan was arrested on January 12, 2022 (ECF No. 26-5 at 5), the
13 warrant could not reasonably authorize continued GPS tracking of the white pickup. An
14 objective assessment of the contents of the search warrant indicates that the GPS tracking
15 of the white pickup starting January 12, 2022 at the latest was not authorized by the
16 warrant.

17 3. Circumstances of the search

18 The Supreme Court has held that the government’s placement of a GPS device on
19 a motor vehicle and use of that device to monitor the vehicle’s movements constitutes a
20 search within the meaning of the Fourth Amendment. *United States v. Jones*, 565 U.S.
21 400, 404 (2012). In *Jones*, the majority opinion focused on the trespassory nature of the
22 intrusion to find a search. See *id.* at 404-05 (“The [g]overnment physically occupied private
23 property for the purpose of obtaining information.”). “Since GPS monitoring of a vehicle
24 tracks ‘every movement’ a person makes in that vehicle, the concurring Justices [in *Jones*]
25 concluded that ‘longer term GPS monitoring in investigations of most offenses impinges
26 on expectations of privacy’—regardless whether those movements were disclosed to the
27 public at large.” *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (citations omitted).

1 Here, the government physically occupied private property—Morgan’s white pickup
2 over which Rubin asserted joint control—when law enforcement placed the GPS tracker
3 on the vehicle on January 6, 2022. (ECF No. 32 at 4; ECF No. 26-4.) And the government
4 conducted prolonged GPS monitoring of the white pickup that essentially tracked Rubin’s
5 “every movement” during the surveillance period. (ECF No. 26-4.) Under *Jones* and
6 *Carpenter*,⁴ the Court finds that the GPS monitoring of the white pickup constituted a
7 search within the meaning of the Fourth Amendment.

8 The government argues that even if the search exceeded the scope of the warrant,
9 Rubin had no reasonable expectation of privacy in the white pickup’s public movements
10 under *Jones* because she is “not challenging the physical intrusion of the placement of the
11 GPS device.” (ECF No. 32 at 17.) The government points to a portion of *Jones* that states
12 it does not answer the question of whether GPS tracking “without an accompanying
13 trespass” is an “unconstitutional invasion of privacy” and argues pre-*Jones* precedent
14 answers that question in the negative. (*Id.*) See also *Jones*, 565 U.S. at 412. However,
15 the Court finds that there was an “accompanying trespass” here when law enforcement
16 did not remove the GPS tracking device when it became unreasonable to continue using
17 it. And despite the fact that Rubin does not directly challenge the initial placement of the
18 GPS device as unlawful, Rubin does in a sense challenge the placement when she argues
19 that law enforcement should have removed the GPS tracker upon learning that she was
20 “the possessor and operator of the vehicle” and refers to the GPS device—not simply its
21 monitoring—as “illegal.” (ECF No. 26 at 5, 11.) There is after all no continued tracking
22 without the initial placement. Because the Court has found that Rubin exerted at least joint
23 control over the white pickup, she may validly challenge both the placement and continued
24 use of the GPS tracking device on the white pickup.

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27 ⁴While *Carpenter* did distinguish GPS monitoring of a vehicle from cell-site location
28 information, the Court finds its dicta and discussion of the *Jones* concurrences persuasive
here.

1 In any event, if the government's argument were accepted, that would permit the
2 government to rely on an initial lawful placement of a GPS tracking device to later excuse
3 or cure continued GPS tracking that exceeds the scope of the warrant that authorized the
4 initial placement. The Court finds that logical conclusion untenable, as it would turn the
5 Fourth Amendment on its head.

6 The government also contends that they continued to receive information after
7 Morgan's arrest that justified the continued GPS tracking of his white pickup. (ECF No. 32
8 at 14-15.) For instance, on January 20, 2022, Officer Collazo learned that Rubin recently
9 traveled to California to purchase methamphetamine and heroin and that she was going
10 to sell these drugs and use the money to post Morgan's bail. (ECF No. 32 at 15; ECF No.
11 26-5 at 5.) While law enforcement may at that point have had probable cause to believe
12 evidence of crimes committed by Rubin could be discovered by tracking the white pickup,
13 if they wished to proceed with the GPS tracking, they were obligated to present that new
14 information to the appropriate judge to determine probable cause and required to obtain a
15 new or amended search warrant targeting Rubin and her use of the vehicle. See
16 *Chambers v. Maroney*, 399 U.S. 42, 51 (1970) ("As a general rule, [the Court] has . . .
17 required the judgment of a magistrate on the probable-cause issue and the issuance of a
18 warrant before a search is made."). As evidenced by the January 7, 2022 amendment to
19 the warrant, law enforcement could have timely obtained a new or amended warrant on
20 January 20, 2022, but they failed to do so.

21 Because the government continued GPS tracking of the white pickup truck after
22 Morgan was arrested on January 12, 2022 without obtaining a new or amended warrant
23 targeting Rubin and her use of the vehicle, the government exceeded the scope of its
24 warrant and conducted an unreasonable search in violation of Rubin's Fourth Amendment
25 rights.

26 **C. Exclusionary Rule and Good Faith Exception**

27 Having found a Fourth Amendment violation, the Court next determines the
28 appropriate remedy under the exclusionary rule. "The prime purpose of the exclusionary

1 rule is to deter future unlawful police conduct and thereby effectuate the guarantee of the
2 Fourth Amendment against unreasonable searches and seizures.” *U.S. v. Sears*, 411 F.3d
3 1124, 1128 (9th Cir. 2005) (internal quotation marks and citation omitted). There is no
4 question that the exclusionary rule applies here.

5 The government argues that even if the execution of the warrant were faulty, the
6 good faith exception to the exclusionary rule applies. (ECF No. 32 at 16.) The Ninth Circuit
7 has held that “the good faith exception to the exclusionary rule permits law enforcement
8 officers reasonably to rely on search warrants that are later determined to be invalid,” and
9 therefore, “the good faith exception has no application . . . where there is no dispute about
10 the search warrant’s validity, but only about . . . whether the search was conducted within
11 the scope of the warrant[.]” *Hitchcock*, 286 F.3d at 1071. Because the validity of the
12 warrant here is not in dispute, the Court finds that the “good faith” exception cannot apply
13 and rejects the government’s argument.

14 Rubin contends that “the eventual discovery of evidence from [her blue sedan] on
15 January 21, 2022, was the direct fruit of the illegal GPS device and monitoring” and
16 therefore the evidence found must be suppressed under the fruit of the poisonous tree
17 doctrine. (ECF No. 26 at 11-12.) The government does not directly respond to that
18 argument and in fact concedes that the evidence obtained in this case on January 21,
19 2022 would not have been obtained without the GPS tracking of the white pickup on that
20 day. (ECF No. 32 at 11 n.5.)⁵ The Court agrees with Rubin and determines that
21 suppression of Rubin’s location data from January 12, 2022 to January 21, 2022 obtained
22 by GPS tracking of the white pickup truck and all evidence stemming from that data,
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27 ⁵At the Hearing, the government clarified its incomplete sentence in footnote 5 of
28 its response brief and conceded that there is no inevitable discovery or attenuation issue
in this case.

1 including evidence obtained from Rubin's blue sedan and motel room on January 21,
2 2022, is the proper remedy.⁶

3 **IV. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several cases
5 not discussed above. The Court has reviewed these arguments and cases and determines
6 that they do not warrant discussion as they do not affect the outcome of the motion before
7 the Court.

8 It is therefore ordered that Rubin's motion to suppress (ECF No. 26) is granted.

9 It is further ordered that Rubin's location data from January 12, 2022 to January 21,
10 2022 obtained by GPS tracking of the white pickup truck and all evidence stemming from
11 that data is suppressed.

12 DATED THIS 21st Day of April 2023.



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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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26 ⁶While it appears likely that it became clear to law enforcement that Rubin was the
27 only one driving the white pickup before January 12, 2022, perhaps as early as January
28 6-7, 2022 (ECF No. 26-3 at 3; ECF No. 26 at 3-4), the Court need not—and does not—
reach that specific determination because it does not affect the outcome here, as the
evidence Rubin seeks to suppress resulted from location data obtained on January 21,
2022.